

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 09-50026 (REG)

4 Adv. No. 1-12-09802 (REG)

5 - - - - - x

6 In the Matter of:

7 GENERAL MOTORS CORPORATION,

8 Debtor.

9 - - - - - x

10 MOTORS LIQUIDATION COMPANY GUC TRUST,

11 Plaintiff,

12 v.

13 APPALOOSA INVESTMENT LIMITED,

14 Defendant.

15 - - - - - x

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19

20 June 28, 2012

21 9:49 AM

22

23 B E F O R E :

24 HON ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: Motion for Objection to Claim(s) Number: 66211
2 and 67347 (filed by D&M Real Estate LLC and Horse Tavern &
3 Grill)

4

5 Hearing re: Motion to Approve the Lower Ley Creek and
6 Onondaga Non-Owned Site Settlement Agreements and Enter the
7 Stipulation and Agreed Order Between the GUC Trust and the
8 United States

9

10 Hearing re: 280th Omnibus Objection to Claims (Welfare
11 Benefits Claims of Retired and Former Salaried and Executive
12 Employees)

13

14 Hearing re: Adv: 1-12-09802 - Telephone Conference

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Jamie Gallagher

1 A P P E A R A N C E S :

2 KING & SPALDING

3 Attorney for the Debtor

4 1185 Avenue of the Americas

5 New York, NY 10036-4003

6

7 BY: ARTHUR J. STEINBERG, ESQ. (TELEPHONIC)

8

9 DICKSTEIN SHAPIRO LLP

10 Attorneys for the GUC Trust

11 1633 Broadway

12 New York, NY 10019-6708

13

14 BY: ERIC B. FISHER, ESQ. (TELEPHONIC)

15 SHAYA M. BERGER, ESQ.

16

17 GREENBERG TRAURIG, LLP

18 Attorney for the Noteholders

19 MetLife Building

20 200 Park Avenue

21 New York, NY 10166

22

23 BY: BRUCE R. ZIRINSKY, ESQ. (TELEPHONIC)

24

25

1 U.S. DEPARTMENT OF JUSTICE

2 Attorney for the Government

3 United States Attorney's Office

4 86 Chambers Street

5 New York, NY 10007

6
7 BY: NATALIE N. KUEHLER, ESQ.

8
9 WEIL, GOTSHAL & MANGES LLP

10 Attorney for the Motors Liquidation Company GUC Trust

11 767 Fifth Avenue

12 New York, NY 10153

13
14 BY: DAVID N. GRIFFITHS, ESQ.

15
16 WEIL, GOTSHAL & MANGES LLP

17 Attorney for Motors Liquidation Company GUC Trust

18 1300 Eye Street, NW

19 Suite 900

20 Washington, DC 20005

21
22 BY: THOMAS GOSLIN, ESQ. (TELEPHONIC)

1 HARRIS BEACH PLLC

2 Attorney for the Town of Salina

3 100 Wall Street

4 New York, NY 10005

5

6 BY: ERIC H. LINDENMAN, ESQ.

7

8 ARNOLD & PORTER, LLP

9 Attorney for the Creditor Honeywell

10 555 Twelfth Street, NW

11 Washington, DC 20004

12

13 BY: JOEL GROSS, ESQ. (TELEPHONIC)

14

15 FRIEDMAN KAPLAN SEILER & ADELMAN LLP

16 Attorneys for Aurelius Investment LLC

17 7 Times Square

18 New York, NY 10036

19

20 BY: EDWARD FRIEDMAN, ESQ. (TELEPHONIC)

21 EAMONN O'HAGAN, ESQ. (TELEPHONIC)

22

23

24

25

1 PAUL HASTINGS LLP

2 Attorney for Appaloosa Investment Limited

3 75 East 55th Street

4 New York, NY 10022

5

6 BY: BARRY G. SHER, ESQ. (TELEPHONIC)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Good morning. Have seats, please.

3 Okay, we have a number of GM case administration
4 matters today, after which, and only after which, we'll then
5 deal with the GM Nova Scotia matters.

6 I see Mr. Griffiths. I see Ms. Kuehler. I'm
7 sorry, I don't know your colleague, Mr. Griffiths.

8 MR. BERGER: I'm Shaya Berger from Dickstein
9 Shapiro.

10 THE COURT: Your name again, please.

11 MR. BERGER: Shaya Berger from Dickstein --

12 THE COURT: Berger?

13 MR. BERGER: Berger, yes.

14 THE COURT: Thank you, Mr. Berger.

15 Okay, who's going to be taking the lead?

16 (Pause)

17 THE COURT: Mr. Berger, come on up, please.

18 MR. BERGER: Good morning, Your Honor. Shaya
19 Berger from Dickstein Shapiro on behalf of the Motors
20 Liquidation Company GUC Trust.

21 I -- will -- I will be handling an uncontested
22 objection to claim, actually two claims. It's the claims of
23 D & M Real Estate, LLC and Horse & Tavern Grill.

24 As set forth in the objection, the claim is for
25 contribution. It is a contribution claim against the

1 debtors. The underlying claimant entered a settlement with
2 the debtors, and by the terms of those -- of that
3 settlement, the claim is barred under Pennsylvanian law as
4 fully set forth in the objection.

5 The objection was served on claimant's counsel.
6 Each claimant is represented by the same counsel in the
7 matter, and we received no response, no opposition to the
8 objection.

9 And unless the Court has any further questions
10 about it, we ask that the objection be granted.

11 THE COURT: Your comfortable that your opponent
12 got it?

13 MR. BERGER: Yes, Your Honor, I mean, we served
14 it, we have the affidavit of service on file --

15 THE COURT: Okay.

16 MR. BERGER: -- we have no reason to believe that
17 it wasn't received.

18 THE COURT: Your objection's sustained,
19 Mr. Berger, and deal with the paperwork with my courtroom
20 deputy and Ms. Plum (ph) down the hall.

21 MR. BERGER: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Griffiths, good morning.

24 MR. GRIFFITHS: Your Honor, good morning. David
25 Griffiths, Weil, Gotshal & Menges for the Motors Liquidation

1 Company GUC Trust.

2 Very briefly, Your Honor, the 280th omnibus
3 objection to claims relating to ten welfare benefit claims
4 of retired and executive employees, the motion is
5 uncontested and the GUC Trust requests that the Court grant
6 the motion.

7 THE COURT: Sure. I won't burden you with further
8 discussion. Your objection's sustained, as well.

9 MR. GRIFFITHS: Thank you, Your Honor.

10 I believe that I have my colleague Tom Goslin on
11 the phone from Weil, Gotshal & Menges who is knowledgeable
12 with respect to the -- with item number 2 on the agenda that
13 my colleague from the U.S. Trustee's Office will present.

14 THE COURT: Would you repeat the name? It looks
15 like I have a thousand people on my phone log, presumably
16 for the Nova Scotia matter to follow.

17 MR. GRIFFITHS: It would be Thomas Goslin.

18 THE COURT: Gossman?

19 MR. GRIFFITHS: G-O-S-L-I-N.

20 THE COURT: Mr. Gossman, you're with us?

21 MR. GOSLIN: I'm here, Your Honor.

22 THE COURT: Oh, Goslin. Forgive me.

23 MR. GOSLIN: No, that's fine.

24 THE COURT: Okay, go ahead, please.

25 MR. GRIFFITHS: Thank you, Your Honor.

1 THE COURT: And I see Ms. Kuehler in the
2 courtroom. Do you want to speak first, Ms. Kuehler?

3 MS. KUEHLER: Yes, Your Honor, if it would please
4 the Court. Assistant U.S. Attorney, Natalie Kuehler, on
5 behalf of the government.

6 We're here with respect to two motions to approve
7 -- or a motion to approve two settlement agreements. The
8 final settlement agreements involving EPA and the GUC Trust,
9 as well as a related stipulation between the United States
10 and the GUC Trust, with respect to one of the settlement
11 agreements.

12 The settlement agreements both relate to the
13 Onondaga Lake superfund site in Upstate New York. The first
14 settlement agreement which we've turned the Lower Ley Creek
15 settlement agreement settles EPA's claims against the GUC
16 Trust with respect to the Lower Ley Creek subsite of the
17 Onondaga Lake superfund site. That is an agreement that was
18 entered into jointly between the United States, the New York
19 Department of Environmental Conservation, and the GUC Trust
20 on behalf of the debtors and their estates.

21 Under that agreement EPA will receive an allowed
22 general unsecured claim of \$38,344,177, and New York DEC
23 will receive an allowed general unsecured claim of \$896,566.
24 The stipulation that we are also requesting that the -- the
25 Court approve today relates to this agreement. We've had

1 other stipulations like this before.

2 The United States expects to receive certain tax-
3 offset amounts and intends to allocate a little bit over 17
4 million of that anticipated tax-offset to its allowed
5 general unsecured claim for the Lower Ley Creek settlement
6 agreement. And this stipulation simply allows the GUC Trust
7 to withhold distribution of that amount on the allowed
8 general unsecured claim until such time as either the tax-
9 offset comes through, at which point the GUC Trust will be
10 able to remove the remainder of the allowed claim from its
11 books, or we find out that the tax-offset does not come
12 through, at which point we would request that the remainder
13 be paid out as an allowed general unsecured claim.

14 With respect to that settlement agreement, we've
15 submitted it to public comment for 30 days. We received
16 extensive public comments from both Onondaga County and the
17 Town of Salina, which we responded to in our moving papers.
18 In response to our moving papers, the county has indicated
19 that it has no objections and the town is --

20 THE COURT: That being Onondaga County?

21 MS. KUEHLER: Correct, Onondaga County, and the
22 Town of Salina had two remaining open issues, which we have
23 addressed as I will describe in further detail. Neither of
24 those, though, related directly to the Lower Ley Creek
25 settlement agreement.

1 The second settlement agreement is the Onondaga.
2 We call it the Onondaga Lake settlement agreement just
3 because it deals with four additional subsites. Two of
4 those subsites are handled through the environmental
5 response trust that was created because they were owned
6 properties of the debtor, but we had not yet received full
7 past costs. So, we settled those claims in full under that
8 settlement agreement. And the remaining two sites are non-
9 owned sites, at which EPA is not the lead agency, but the
10 support agency. And so for those --

11 THE COURT: By non-owned sites, do you mean GM had
12 disposed of them at an earlier time?

13 MS. KUEHLER: No, they had actually never been
14 owned by GM.

15 THE COURT: Never ever.

16 MS. KUEHLER: Correct. The first is the Salina
17 landfill. It's a landfill to which GM carted certain
18 wastes, which were disposed of there. And the second is the
19 lake bottom itself, which Lower Ley Creek flows into and
20 therefore certain wastes that entered Lower Ley Creek
21 eventually ended up at lake bottom.

22 Both of those subsites, the lead agency is the New
23 York Department of Environmental Conservation, and EPA's
24 resolution of -- of its claims against the debtors, here, do
25 not relate to future response costs other than EPA's

1 anticipated future oversight costs.

2 With respect to those two subsites, in particular,
3 I would like to make it clear that the United States did not
4 share its cost calculations or allocation methodology with
5 the -- with the debtors.

6 The fact that we were able to reach a settlement
7 merely reflects that we were able to come to the same
8 number, though through different methodologies and
9 calculations. And also, of course, as with any of these
10 settlement agreements, the methodology EPA used for purposes
11 of arriving at its settlement amount, were not agreed to as
12 fact by the debtors, or by other PRPs, and are not binding
13 on other PRPs in other negotiations, or for that matter, on
14 EPA negotiations with other PRPs. I want to make that very
15 clear because that was one of the concerns that the Town of
16 Salina had and also the debtors asked me to clarify that, as
17 well.

18 The remaining concern that the Town of Salina had
19 was that it wanted to also make it clear that the
20 contribution protections provided in the Onondaga settlement
21 agreement, do not extend to the recovery of future or past
22 costs that the Town of Salina may incur at the Salina
23 landfill site. That is correct.

24 As I mentioned before, the matters that are
25 resolved by EPA do not include PRPs past cost claims, nor do

1 they include future response costs that are incurred by
2 either New York DEC or other PRPs, other than EPAs on
3 oversight costs. However, to avoid any confusion, what we
4 have done is we've agreed to include in the proposed order
5 approving the settlement agreements a sentence that
6 clarifies that the matters addressed under paragraph 22 of
7 the settlement agreement, which is the paragraph by which
8 contribution protection is being provided, does not include
9 contribution protection for either which was already in the
10 proposed order, Honeywell, the main PRP at the lake bottom's
11 future response cost claims, or the Town of Salina's future
12 response cost claims with respect to the Salina landfill.

13 And with that, I believe there are no objections
14 remaining to the entry of either of these settlement
15 agreements, and there were none with respect to the tax-
16 offset stipulation, and the United States, therefore,
17 respectfully requests that the Court approve those
18 settlement agreements as reasonable and fair, and in the
19 interest of the public, and also enter the adjoining tax-
20 offset stipulation.

21 THE COURT: Uh-huh.

22 Town of Salina want to comment?

23 MR. LINDENMAN: Your Honor, just one brief --

24 THE COURT: Come to a mic, please.

25 MR. LINDENMAN: Very good.

1 THE COURT: Good to see you again, just come on
2 up.

3 MR. LINDENMAN: Thank you.

4 THE COURT: Put an appearance in for the recording
5 system, and --

6 MR. LINDENMAN: Certainly.

7 THE COURT: -- just confirm, if you could, that
8 Ms. Kuehler got it right.

9 MR. LINDENMAN: Yes. Eric Lindenman of Harris
10 Beach for the Town of Salina.

11 Your Honor, the order does in fact contain the
12 additional language that we have requested, and we are in
13 agreement with the United States.

14 The only other bit of clarification, you know,
15 magic words are always important, Your Honor. It's
16 important for the record to note that the EPA estimates were
17 not shared, not only with -- were not shared, not just --
18 not with the debtor, but the Town of Salina was also not
19 privy to the settlement discussions, the estimates, and none
20 of that is binding upon the Town of Salina, as well.

21 With that slight bit of clarification, we have no
22 additional objection and agree that our objection is
23 resolved based on Ms. Kuehler's statements.

24 THE COURT: Did you have any discussions with
25 either Ms. Kuehler or anybody else about whether anybody

1 wants me to put that in the order, or whether the record --
2 the transcript. will be sufficient?

3 MR. LINDENMAN: We discussed that, Your Honor.
4 The language that's currently in the order, together with
5 the statements on the record, are sufficient for our
6 purposes.

7 THE COURT: Okay.

8 MR. LINDENMAN: Thank you.

9 THE COURT: All right, good enough.

10 Mr. Goslin, do you have any desire to be heard?

11 MR. GOSLIN: Yes, Your Honor. Tom Goslin, Weil,
12 Gotshal & Menges on behalf of the MLC GUC Trust.

13 Only one thing I'd like to note for the record.
14 Is that the GUC Trust is entering into a stipulation with
15 Honeywell to resolve a potential objection to the settlement
16 and -- and that stipulation is that, as Ms. Kuehler noted,
17 EPA asked us to resolve MLC's liability for -- for future
18 and past remediation at the lake bottom site with Honeywell,
19 the primary PRP there, and -- and also the GUC Trust agreed
20 to do so.

21 That said, we had filed an objection under
22 502(E) (1) (b) sometime ago when we understood that we would
23 be resolving the future remediation claims with EPA, and we
24 filed that objection against the Honeywell claim.
25 Understanding now that we will be resolving the future and

1 past remediation costs with Honeywell, Honeywell requested
2 that we (indiscernible - 00:12:40) that objection and we are
3 entering into a stipulation to do just that.

4 THE COURT: I lost the last part of what you said.
5 Honeywell asked that you withdraw your 502(E)(1)(b)
6 objection?

7 MR. GOSLIN: That's correct, Your Honor.

8 THE COURT: Okay.

9 MR. GOSLIN: And -- and we've agreed to do so,
10 understanding that we will be resolving future and past
11 remediation liability with Honeywell as the primary PRP, as
12 opposed to doing so with EPA.

13 THE COURT: As opposed to doing so --

14 MR. GOSLIN: With the Environmental Protection
15 Agency. So, in other words, Honeywell is stepping into the
16 shoes of EPA with respect to future and past remediation.

17 THE COURT: Okay. Okay.

18 Anybody else want to be heard? Has everybody had
19 a chance to speak their piece on this matter?

20 MR. GROSS: Yeah, Your Honor, this is Joel Gross
21 with Arnold & Porter for Honeywell, and Mr. Goslin has
22 accurately stated our position and we are in support of this
23 stipulation.

24 THE COURT: So you're okay with everything that
25 was said, Mr. Gross?

1 MR. GROSS: Yes.

2 THE COURT. All right.

3 Anyone else?

4 (Pause)

5 THE COURT: Okay, folks, since this is now
6 unopposed with the objections and reservations having been
7 consensually addressed, I'm not making detailed findings.

8 An environmental settlement of this character
9 requires me to make double-barreled findings. One that the
10 estate, here, I guess we're now talking about the GUC Trust,
11 isn't giving away the store; and one, in substance, that the
12 settlement is in the public interest and that the federal
13 government has done its job.

14 In this case, like others that I've been asked to
15 approve, it's very easy for me to make both findings.
16 Settlements of this character need, from the estate's
17 perspective, to be within the range of reasonableness. And
18 the procedures that have been undertaken by the federal
19 government and their sensitivity to the comment process, and
20 their willingness to address the needs and concerns of the
21 objectors, all very easily give me comfort that the federal
22 government has done its job, as well, and that the
23 settlement is in the public interest.

24 So, accordingly, I'm approving it from both
25 perspectives, finding the settlement to be in that sweet

1 spot in the middle.

2 And I'm going to ask you, Ms. Kuehler, to
3 quarterback on behalf of all the parties, getting me the
4 paperwork to implement the ruling.

5 MS. KUEHLER: We'll do so, thank you, Your Honor.

6 THE COURT: Thank you.

7 Okay, to what extent do we have other matters in
8 GM before the conference call and Nova Scotia?

9 Mr. Griffiths, are we done?

10 MR. GRIFFITHS: Yes, Your Honor, no other matters.

11 THE COURT: Okay, then everybody who's here in the
12 courtroom is excused. I'm going to be staying in the
13 courtroom for the conference call to continue.

14 MR. LINDENMAN: Thank you, Your Honor.

15 THE COURT: We'll take a moment to let you guys
16 leave.

17 (A chorus of thank you)

18 THE COURT: Okay, we now have the -- several
19 motions for leave to file summary judgment motions and the
20 various letters, all of which I have read. This, of course,
21 is for a prius (sic) of issues that we've discussed before,
22 I'm going to dispense with the questions. I think you know
23 what my concerns are, which are --

24 CourtCall, I heard a phone ringing, can you stop
25 that in some way?

1 OPERATOR: I'll try to isolate that line, Your
2 Honor, I apologize.

3 THE COURT: All right. My issues are several, but
4 most significantly, how I am going to deal with what one
5 side's beliefs involves no disputed issues of fact, but
6 which is very much disputed, and the second thing which is,
7 unless my count is wrong, we have a trial on August 7th,
8 which is only a shade more than 30 days from now. So, when
9 you make your presentations, folks, help me with that.

10 Who's going to take the lead?

11 MR. FRIEDMAN: It's -- it's all right, this is Ed
12 Friedman on behalf of Aurelius Investment LLC, and I will
13 start because I think I can be briefer than everyone and I
14 think the issues relating to Aurelius are more straight
15 forward.

16 As Your Honor knows, on June 21, we wrote to the
17 Court concerning our proposed motion for summary judgment.
18 On June 26, counsel for the GUC Trust wrote to Your Honor
19 stating that the GUC Trust does not oppose Aurelius' filing
20 of a motion for summary judgment. They, the GUC Trust, adds
21 the proviso that provided the filing of the motion will not
22 delay commencement of the trial, and we -- we do not see
23 that as a problem.

24 As set forth in my letter of June 21, the summary
25 judgment motion to be filed by Aurelius will be narrow in

1 scope, it will present the issues that were before the Court
2 in connection with the 12(b)(6) motion previously filed by
3 Aurelius. As Your Honor will recall, at the argument on
4 that motion, the -- the Court concluded that documents
5 evidencing Aurelius' sale of notes were not properly before
6 the Court on a 12(b)(6) motion.

7 We subsequently provided additional information to
8 the GUC Trust, including information as to Aurelius
9 transferees, and we now are in a position where, my
10 understanding is, that the GUC Trust will not be disputing
11 the fact that Aurelius has sold all the Nova Scotia notes it
12 previously owned.

13 Therefore, the legal issues presented on the
14 motion are the issues that are before the Court in
15 connection with the 12(b)(6) motion, and I'm not going to
16 burden the Court and the record with a -- with a recitation
17 of -- of those issues.

18 We do have a disagreement as to the legal issues,
19 being that the GUC Trust believes that certain provisions
20 and the plan result in Aurelius being a proper defendant,
21 even -- even though Aurelius sold its notes. We believe
22 those plan provisions do no such thing, and that -- that
23 legal issue will be, again, teed up for the Court on the
24 summary judgment motion --

25 THE COURT: Pause, please, Mr. Friedman. You

1 answered one of the questions I had, an important one, about
2 not delaying the commencement of the trial, but I had
3 another one, as well.

4 Did you have any discussions with Mr. Friedman --
5 with Mr. Fisher, or any of his guys, vis-à-vis, protecting
6 the GUC Trust from any prejudice that might result from
7 arguments that with you having left the case you would be a
8 necessary party, and that if there is otherwise successor
9 liability by reason of anything your guys did before they
10 sold it wouldn't be -- result in the transfer and letting
11 you out of the case wouldn't have an adverse effect upon
12 them?

13 MR. FRIEDMAN: Your Honor, I did not discuss that
14 issue with Mr. Fisher. I think that is a legal issue, and I
15 do not see how a dismissal of the claims as against Aurelius
16 could impact, one way or the other, the ability of the GUC
17 Trust to obtain the relief it is seeking in this complaint,
18 which is, as Your Honor knows, a request for subordination
19 of claims and reduction of claims.

20 In fact, as -- as Your Honor will recall, we -- we
21 believe the law is clear that in light of the nature of the
22 relief being sought, whatever claims the GUC Trust is
23 pressing, whatever allegations it is presenting, must be
24 litigated with the defendants who have a stake in the
25 matter, that is with defendants who have claims and rights

1 to distributions.

2 And in litigation with those defendants, the GUC
3 Trust will have to make out whatever basis it has for
4 equitable subordination, including allegations as to
5 Aurelius, as well as issues concerning -- well, I'll use the
6 shorthand issues concerning whether claims may be tainted
7 when they are transferred.

8 But the point is, all of those issues we would
9 submit need to be litigated with the proper party, and
10 Aurelius, as a defendant, is not only not necessary, it is
11 completely superfluous, because a judgment as against
12 Aurelius would have no effect as -- as respects of parties
13 who have acquired securities formerly owned by Aurelius.

14 THE COURT: Uh-huh. Okay.

15 I think what I would like to do now is get
16 Mr. Fisher's comments on what you just said, Mr. Friedman,
17 and anybody else who wants to weigh in on Aurelius as
18 contrasted to the others, after which I'll hear the other
19 issues.

20 Mr. Fisher?

21 MR. FISHER: Good morning, Your Honor.

22 The GUC Trust position with regard to the proposed
23 Aurelius motion is -- to restate some of what was argued in
24 connection with the motion to dismiss -- we think that
25 Aurelius is -- is wrong as a matter of law. And -- but,

1 importantly, it is as a matter of law, and I -- I have --
2 I've worked with Mr. Friedman who has supplied information
3 to ensure that Your Honor won't be dealing with disputed
4 facts about whether or not Aurelius sold its notes.

5 So, we think it's a motion as to which we'll
6 prevail, but we acknowledge, and we acknowledged in our
7 letter that is the kind of motion that is amenable to
8 resolution on -- on summary judgment.

9 In terms of how -- in the event that we were to
10 lose the motion, I -- I appreciate Your Honor raising the
11 question of -- of how it would affect our right to trial and
12 our delay to get the relief that we need, and I think my
13 paramount concern in that regard is in the event that
14 Aurelius were to be dismissed from the case, which we think
15 would not be the correct result, but if that were to happen,
16 it, obviously, would be very important to us to ensure that
17 Aurelius was available as a witness at trial, because even
18 if it is out of the case it's still Aurelius' conduct
19 that's, of course, at issue with regards to the equitable
20 subordination claim.

21 So that -- that's a concern that's important to
22 us, and I'd like to try to work with Mr. Friedman to ensure
23 that we don't have any last minute problems at trial in the
24 event that Aurelius were to prevail on its summary judgment
25 motion.

1 But we don't -- we don't oppose Aurelius making
2 the motion, I'd like to confirm with Mr. Friedman to ensure
3 that we can submit briefs that are short, and focused, and
4 -- and that get this teed up in advance of the August 7th
5 trial date, Your Honor.

6 THE COURT: Uh-huh.

7 Mr. Friedman, I sense that much of what Mr. Fisher
8 said you don't need to reply to. I don't know if that's 100
9 percent, and certainly what he said about wanting to have
10 comfort that your guys would be around as witnesses is one
11 that got my attention.

12 Can you respond to that even if you don't need to
13 respond to anything else?

14 MR. FRIEDMAN: Yes, Your Honor, I will respond to
15 that.

16 Mr. Gropper is available to testify as a witness
17 based on the currently scheduled trial. If the -- if the
18 trial dates change I know Mr. Gropper does have plans for
19 other -- other weeks and days in August, so if the trial
20 date changes, then we would certainly participate in
21 discussions concerning Mr. Gropper's schedule or the parties
22 would have available to them the extensive deposition
23 testimony of Mr. Gropper.

24 But as things now stand, based on the dates
25 scheduled by the Court, Mr. Gropper will be available and is

1 planning to be available as a witness at the trial.

2 THE COURT: Is Mr. Gropper the only guy we're
3 talking about? I seem to remember from dealing with the
4 discovery dispute that there was at least an analyst or --
5 or some more junior guy --

6 MR. FISHER: Exactly right, Your Honor. This is
7 Eric Fisher again.

8 Dennis Prieto (ph) is another Aurelius witness who
9 is on our witness list.

10 THE COURT: Okay.

11 MR. FRIEDMAN: I -- I will have to check
12 Mr. Prieto's schedule, but I do not anticipate any problem.

13 THE COURT: All right, well I'm not going to look
14 for any problems.

15 To what extent do we need to talk about Aurelius
16 more before we talk about the other guys?

17 (Pause)

18 THE COURT: I gather none. All right, let me --

19 MR. FRIEDMAN: May I just say, Your Honor, with --
20 with the Court's indulgence, I will try to stay on the call
21 until its -- its conclusion. And in all events my
22 colleague, Eamonn O'Hagan, is on the line, but I'm -- I'm
23 making this call from the mediation office of the Southern
24 District where I am a volunteer mediator, and I have parties
25 coming in who will be appearing before me in a long,

1 scheduled mediation at 10:45, so --

2 THE COURT: All right, you -- you're --

3 MR. FRIEDMAN: -- they may be late.

4 THE COURT: -- you're free to stay on or leave,
5 just don't feel that you have either the need or, for that
6 matter, the authority to interrupt other guys if you find
7 that you have to leave just --

8 MR. FRIEDMAN: That's -- that's why I was --

9 THE COURT: -- get off the phone.

10 MR. FRIEDMAN: -- speaking now, Your Honor.

11 THE COURT: Okay.

12 MR. FRIEDMAN: So, thank you.

13 THE COURT: All right, next of the people who want
14 leave to file a summary judgment motion.

15 MR. SHER: Your Honor, it's Barry Sher on behalf
16 of Appaloosa. May I proceed?

17 THE COURT: Yes.

18 MR. SHER: Good morning, Your Honor. I will
19 address your two questions. I -- I will be brief and I'll
20 come back to the file date.

21 The Court's read the -- the letter submissions, I
22 won't repeat them. We're here on a pre-motion conference
23 for summary judgment. I just want to stress one point from
24 those letters, and that relates to the allegation. The
25 original complaint about this, what was described as

1 eleventh hour of pouncing by the bounds -- by the band of
2 hedge funds, and that was the basis for the whole argument
3 that these people were somehow able to get undue leverage,
4 back value from GM, the U.S. government, and the Canadian
5 government that they didn't want to give.

6 In our view, that was never rational or plausible,
7 but now it's been exposed in discovery as false and it's now
8 been withdrawn. No longer alleged, it's been deleted from
9 the amended complaint. And I want to pause on that because
10 this is not, you know, a run of the mill he-said she-said
11 type of argument, this really gets to your point about how
12 to deal with the fact that one party says this.

13 Allegations were false, plaintiffs admit they were
14 false. They withdrew them from the complaint. The same is
15 true with the other allegations they were forced to
16 withdraw. That the pre-petition loan from old GM to GM
17 Canada wasn't repaid, it was. Allegation that GM Nova
18 Scotia had no assets when it settled, it had expenses, all
19 type -- over a billion dollars worth of assets in a form of
20 an intercompany loan. All laid out in our papers, all
21 withdrawn or false. And that's why we think summary
22 judgment is so appropriate here, the factual underpinnings
23 are gone, but the claims live on.

24 And it is -- it is, you know, sort of well and
25 good to say now, GUC Trust said in a footnote, well, you

1 know, Your Honor, you don't have to pay attention to
2 withdrawn allegations, and we're very central, anyway.

3 The fact is, they were page 1 in the complaint,
4 prior story made up about undue leverage, and since we're
5 talking about equitable subordination, the bar is supposed
6 to be very, very high, particularly for non-insiders like
7 the defendant here, and they don't have a case.

8 That brings me to my last point, Your Honor, as I
9 said, I'd be brief, which is the newly made argument and
10 theory of insider trading. And I'll just say this about
11 that. Over the last two years, we've had two objections
12 filed (indiscernible - 00:32:52) in this Court, starting
13 back in 2010, including an amendment complaint that was just
14 filed days ago. Not one of them mentions securities
15 trading, not a single allegation about securities trading.
16 The words do not appear. GUC Trust produced a 30(b)(6)
17 witness, Mr. Venasky (ph). Asked repeatedly what the basis
18 for the equitable subordination claim was, and he never
19 mentioned it either.

20 Discovery's closed, it closed at the end of May,
21 followed by the letter seeking summary judgment in early
22 June. Four days after the amended complaint that did not
23 have these allegations in it, but in -- in its responsive
24 letter, as the Court knows, said wait a minute, there's
25 another ground why summary judgment shouldn't be allowed,

1 why we in (indiscernible - 00:33:43), it should not be
2 allowed to make this motion, that's because of insider
3 trading.

4 Laid out in very summary form, the argument is
5 specious, it has no basis. But, more importantly, the way
6 it was raised says two things. One, we think it confirms,
7 recognizes that the allegations that actually are in the
8 complaint are insufficient to withstand summary judgment.
9 But, more importantly, we believe it is clear that they're
10 precluded from raising this now. Plus, wait until after
11 discovery closed, after all the pleadings were in that never
12 mention securities trading. Pro-discovery on the issue,
13 we've not been able to retain experts to defend ourselves,
14 our clients. There's no evidence, there's no due process.

15 Second Circuit is clear, you cannot amend an -- a
16 complaint in opposing summary judgment, in the letter in
17 response to summary judgment. It violates fundamental due
18 process rights, violates the Court's scheduling orders, the
19 federal rules. We think it would be clearly reversible
20 error to allow these arguments to proceed in the upcoming
21 trial.

22 We think that it -- we think it's no answer. I
23 think -- I -- I submit to you that it is -- to the Court
24 that it's no answer to say, look, this is a Bankruptcy
25 Court, things are looser in here, anything goes. I think

1 that's disrespectful and abuse of the judicial system.

2 The same is true of the argument which trust
3 counsel made in a call to me yesterday, oh, this is
4 Bankruptcy Court, we don't really have to satisfy the
5 standards for showing insider trading, the securities
6 violations, it's just some loose, changeable, malleable
7 standard that could be applied retroactively after this,
8 long after the fact.

9 There are well-developed rules and laws governing
10 securities trading and claims relating to it, and securities
11 are securities. Securities of distressed companies are not
12 subject to different rules. This Court should not accept
13 that kind of argument, and we believe strongly, as we -- the
14 letter that an Article III Court would not accept it.

15 THE COURT: Mr. Sher, forgive me. I know you
16 don't litigate as much in the Bankruptcy Court as some of
17 the other people on this call. Do you know of anybody who
18 has suggested before you suggested now that rules don't
19 apply in Bankruptcy Court?

20 MR. SHER: Yes, I'm -- I'm describing the
21 conversation I had yesterday with GUC Trust counsel. But I
22 was told --

23 THE COURT: And you're attributing to your
24 opponent a statement that Bankruptcy Courts are loosey-
25 goosey and don't follow rules of law?

1 MR. SHER: That's -- that's not the statement I'm
2 attributing to GUC Trust counsel. The statement --

3 THE COURT: Tell me exactly what you're
4 attributing to him, because it seemed to me that you were
5 attacking a straw man that is frankly offensive to many, if
6 not all, bankruptcy judges.

7 MR. SHER: I did not intend that. Here -- here is
8 what I said, and here is what I'm saying.

9 What was said to me yesterday is, we do not -- we,
10 the GUC Trust, do not have to satisfy standards for a
11 securities law violation in Bankruptcy Court. I -- in other
12 words --

13 THE COURT: You mean, in a -- in a 34 Act 10(b) (5)
14 suit.

15 MR. SHER: Correct.

16 And I -- that -- that the issue of insider trading
17 can be alleged, pursued in a far more, you know, loosey-
18 goosey way. I mean he didn't use those words, but that is
19 the import of what he was saying. I -- the -- and that the
20 protections that the Supreme Court and Congress have put in
21 place for these kind of claims, which they have both said
22 are particularly vexatious and subject to abuse, do not
23 apply, including the mandatory sanctions review and all of
24 the protections that are -- that have been established over
25 many decades.

1 And that -- so that's why I'm -- and that's what
2 he said to me. And so that's why we do not believe this
3 Court should -- we don't think this Court should accept it,
4 we don't think an Article III Court would accept it, and
5 that's why we described in our letter steps that we believe
6 we would have to take if this were allowed to proceed,
7 including moving to withdraw the reference.

8 But the more important point, I think, for now is
9 that the Second Circuit has made it extremely clear that
10 they are not entitled to do what they're doing in their
11 complaint in opposition to a -- a request for summary
12 judgment.

13 On the timing, if -- if you'd like me to proceed
14 to that and -- and then I can finish up.

15 THE COURT: Go on.

16 MR. SHER: The -- on the timing issue, I don't
17 believe that allowing us to file a summary judgment motion
18 to dismiss what we believe are the -- are basis claims,
19 would -- would interfere with the schedule. We can file our
20 motion extremely quickly. We have the benefit of new GM's
21 undisputed fact that we could rely extensively on. There
22 might be some augmentation, but not much. And we think the
23 briefing can be done over the next five weeks. We would
24 work with GUC Trust counsel to do that, and if need be, at
25 least it has been my experience in other cases, that we

1 could have argument the first day, on August 7 if we needed
2 to, or a day earlier at the Court's convenience.

3 THE COURT: Anything else, Mr. Sher?

4 MR. SHER: That's it. Thank you.

5 THE COURT: All right.

6 MR. ZIRINSKY: Your Honor, it's Bruce Zirinsky --

7 THE COURT: Go ahead.

8 MR. ZIRINSKY: -- on behalf of Fortress, Elliot,
9 and Morgan Stanley.

10 I won't repeat what's in our letter, I'm sure Your
11 Honor has had an opportunity to read my letter as well as
12 the -- all the other letters that were submitted. In
13 addition, I'm not going to repeat everything that
14 Mr. Sher said.

15 I do want to, just at the outset, concur with
16 Mr. Sher's view on his response to Your Honor's questions
17 about timing.

18 I also want to add that while we do have three
19 trial dates on Your -- Your Honor's calendar in August, the
20 GUC Trust has submitted to us a proposed witness list of up
21 to approximately 20 witnesses that they would intend to call
22 at trial. And from our perspective, a trial which would
23 include as many as 20 witnesses will likely not be speedily
24 determined if the Court has to hear each and every one of
25 those witnesses.

1 So we're not all that sanguine that this is a
2 matter that could be tried in a matter of a few days and
3 then fully submitted to Your Honor for decision.

4 I -- I'd like to just start out by saying, Your
5 Honor, that I've -- I've said this from the very, very
6 beginning two years ago, that it was our strong belief that
7 these claims asserted first by the creditors committee and
8 then succeeded to by the GUC Trust are totally devoid of
9 merit.

10 Having gone through very extensive discovery,
11 having produced hundreds of thousands of pages of documents,
12 having submitted to numerous depositions of witnesses on
13 behalf of each of my clients, as well as other parties,
14 witnesses of General Motors, the debtor at the time, as well
15 as new GM, Weil, Gotshal, and now we're going through expert
16 witnesses. There has not evolved from any of this discovery
17 a single material fact which would support the allegations
18 that have been made by the GUC Trust going to equitable
19 subordination or re-characterization.

20 We attempted to illustrate in the letter that we
21 submitted ample references to the -- to the record,
22 including depositions of a number of witnesses, including GM
23 witnesses, which respond to each and every one of what the
24 GUC Trust claims to be facts which we believe are not true
25 facts; and moreover, most of the allegations that are really

1 made by the GUC Trust are not --are not facts at all, but
2 they're legal arguments and we believe that they're flawed,
3 fatally flawed legal arguments, and that we do believe that
4 this case can be resolved on a motion for summary judgment.

5 I -- I'd also like to point out that the Court
6 already has before it new GM's motion for summary judgment,
7 and many of the issues that are before the Court in the form
8 of the objections to the claims of my clients, as well as
9 the other noteholders, have already now been placed before
10 the Court, including most particularly, this whole question
11 about the lock-up agreement and whether the GUC Trust can
12 sustain its allegations with any proof whatsoever that this
13 was a post-petition agreement.

14 So, in looking at the responsive letter that
15 Mr. Fisher submitted to the Court in response to my letter,
16 he goes through a lot of discussion, and I will say this
17 without intending any offense, statements that really, truly
18 distort what the actual record is. But nonetheless, he goes
19 through a lot of discussion about facts which supportably
20 are in dispute concerning the -- the lock-up agreement.

21 Whether or not there are facts in dispute, and we
22 don't believe there are any genuine, triable issues of fact
23 in dispute, that matter has already been placed before the
24 Court by new GM, and so the Court's going to address those
25 issues in connection with new GM's motion for summary

1 judgment. So we don't really have to deal with that a
2 second time.

3 We would, of course, in connection with our motion
4 for summary judgment, possibly augment some of the facts
5 that have been asserted by -- by new GM, and perhaps make
6 some additional legal arguments, but in point of fact, this
7 would be nothing new, essentially, for the Court.

8 The only facts that are really remaining for the
9 Court go to issues as to whether or not the consent fee
10 should have been returned to old GM, and I'm again referring
11 to the prongs of Mr. Fisher's letter in response to my
12 letter, which again goes through a totally undisputed fact
13 now which says that, regardless of everything else, whatever
14 monies were loaned by GM to GM Canada were fully repaid.

15 So there's been no -- whether or not the consent
16 fee was paid, or should have been paid, or there was harm,
17 or was no harm, there cannot be any harm, because whatever
18 was paid was totally refunded to -- to GM, the debtor, by GM
19 Canada before the -- before the sale.

20 In addition, the arguments raised by Mr. Fisher as
21 to triable issues of fact, the allege violation of the
22 automatic stay, these are all legal arguments. Whether or
23 not it was a violation of the stay for the noteholders to
24 petition for GM Nova Scotia into bankruptcy violated the
25 automatic stay in the Chapter 11 case, there are no factual

1 disputes as to what happened. The only issue is whether, as
2 a matter of law, that violates the automatic stay.

3 And secondly, the -- whether or not the Nova
4 Scotia trustee violated the automatic stay by terminating
5 the currency of swap agreements with GM, whether that was a
6 violation of the automatic stay, is again purely a legal
7 issue. There were no disputes of fact, no disputed facts as
8 to what happened.

9 The next argument is that this is supposedly a
10 factual issue as to whether or not the consent fee was
11 commercially reasonable or not, or unreasonable. Again,
12 there are no disputed facts. The only argument made by the
13 GUC Trust in support of this is that if the lock-up
14 agreement and the claims are allowed to stand, that GM Nova
15 Scotia holders will receive, in the aggregate, greater
16 payments on their notes and guarantees than other general
17 unsecured creditors. That's not in dispute.

18 The issue is whether or not there's anything
19 improper about that, or which would give rise to a basis
20 legally, a legally cognizable basis, for either equitable
21 subordination or for re-characterization of those payments
22 as something other than a consent fee. Again, purely a
23 legal issue.

24 Lastly, the question of whether or not the Nova
25 Scotia litigation commenced by certain of the noteholders

1 before the GM bankruptcy was frivolous. Again, there has
2 not been a single shred of evidence put forth by the GUC
3 Trust which would support the claim that -- or their claim
4 that that litigation was meritless. Indeed, it's totally
5 belied by the testimony of General Motors' witnesses. None
6 of them testified that the litigation was -- was meritless.

7 In addition, there's no legal basis for whether --
8 for -- for basing an equitable subordination claim on the
9 grounds that a creditor brought litigation against the
10 debtor before the bankruptcy. That, in and of itself, is
11 just as a matter of law, an insufficient basis for there to
12 be a claim for equitable subordination.

13 In addition, when we go to all of the allegations,
14 the GUC Trust makes no allegations whatsoever that there was
15 any injury caused to General Motors' estate or creditors as
16 a result of -- of the transactions under the lock-up
17 agreement, the lock-up agreement itself, or the payment of
18 the consent fee.

19 It is acknowledged that there was no depletion of
20 General Motors' estate, these funds were paid out of General
21 Motors Canada, not out of GM U.S., General Motors Canada is
22 a non-debtor, and there was no diminution in the estate,
23 whatsoever.

24 Moreover, the very terms of the asset purchase
25 agreement that was approved by the Court in connection with

1 the sale to new GM of assets, had a cap on the amount of
2 cash that could be retained by old GM, and that was an
3 amount of cash determined as being sufficient to wind down
4 the -- the GM bankruptcy estate and to administer it. There
5 was never any intention, whatsoever, for any additional cash
6 to be left behind. And as I'm sure Your Honor's aware, that
7 was a matter that was raised very specifically before the
8 Court at the time.

9 I'd also reiterate Mr. Sher's comments about the,
10 what I'll call the -- you know, the after midnight now
11 allegation in a letter in response to our letter that
12 Fortress somehow improperly conducted itself because it
13 purchased additional notes, GM Nova Scotia notes, on
14 June 2nd, a day after the bankruptcy was filed and a day
15 after an 8K was filed and released by General Motors
16 disclosing in very substantial detail the terms of the lock-
17 up agreement, and a day upon after which the notes had
18 already appreciated in market price from approximately 15
19 cents on the dollar, to approximately 50 cents on the
20 dollar. There is absolutely no basis for these allegations.

21 And secondly I would reiterate what Mr. Sher has
22 said, that we believe it's totally unjust (sic) and contrary
23 to the law in this circuit were the GUC Trust to raise this
24 issue belatedly in an attempt to fend off a potential motion
25 for summary judgment. We think it would be wholly improper

1 for this issue to be raised at this point, two years after
2 the litigation, and to be raised three days after they had
3 actually filed an amended complaint in this case. And at no
4 time in any of the previous pleadings or arguments before
5 this Court have they ever raised any issues about the
6 conduct of purchase or sale of securities by noteholders,
7 let alone complain or ever contend that these were somehow
8 violative (sic) of -- of the federal securities laws.

9 They've already had one chance to amend their
10 claim as of right, and we think it would be totally
11 inappropriate and prejudicial to the defendants in this
12 case, particularly my -- my clients, for the Court to permit
13 this belated amendment right on the eve of our request for
14 motion to leave to file motions for summary judgment.
15 Alternatively, 30 days before the commencement of trial and
16 after all -- all fact discovery has been completed.

17 I won't go on, other than to say, Your Honor, that
18 for all of these reasons, we don't think there are any
19 genuine, material, triable issues of fact. We think the
20 Court can decide this case on the papers, and I think to put
21 the defendants through the burden of having to go through an
22 extensive, lengthy, unnecessary trial on these issues, which
23 will only serve to increase their cost, their burdens, and
24 further delay distributions on their claims, would be
25 inappropriate.

1 Thank you, Your Honor.

2 THE COURT: All right. Do I need to hear from
3 anybody else before I give Mr. Fisher a chance to respond?

4 (Pause)

5 THE COURT: I guess not. Okay, go ahead,
6 Mr. Fisher.

7 MR. FISHER: Thank you, Your Honor. It's been
8 difficult to stay quiet.

9 I -- I want to start just by addressing Mr. Sher's
10 comments, and I want to start in particular with the way in
11 which he characterized our conversation, and this goes to
12 what everyone is saying about so-called insider trading,
13 because the way in which he characterized our conversation,
14 I would say, was in the nature of a -- of a personal attack,
15 and it was not at all a fair characterization of the
16 conversation, which was an important one.

17 Mr. Sher's question to me over the past few days
18 has been, is the GUC Trust reserving its right, or -- or is
19 the -- does the GUC Trust plan to introduce evidence at
20 trial of insider trading? That's been his question to me.
21 And my answer, and in particular in our phone call
22 yesterday, I said to Mr. Sher, I wouldn't quite call it
23 insider trading. The way that we think about it is we
24 reserve our right to introduce evidence at trial that
25 between June 1 and August 7th, Appaloosa traded in the

1 securities of GM Nova Scotia Finance while in possession of
2 material, non-public information, and that advantaged it
3 over other creditors, and as a basis for equitable
4 subordination.

5 And I think the distinction is important because
6 all I was communicating to Mr. Sher, and I made this very
7 clear, is that this is not -- we're not turning this into a
8 10(b)(5) case, this is what it's always been, it's an
9 equitable subordination case. And that is an example of
10 inequitable conduct, among the other examples of inequitable
11 conduct that we reserve our right to pursue at trial.

12 His characterizations about loosey-goosey and --
13 and -- and everything to that effect is absolutely false.

14 Throughout this case we have adhered strictly to
15 the rules and we understand that the trial before Your Honor
16 is a trial that's going to be conducted strictly in
17 accordance with the rules, and we've never conducted
18 ourselves in any other way, and never suggested to anyone
19 that the rules should be relaxed in any way in Bankruptcy
20 Court. So, I -- I just really feel the need to be very
21 explicit about that.

22 In terms of, and this is Mr. Zirinsky and
23 Mr. Sher, this suggestion that they're shocked to hear that
24 we would introduce at trial evidence that their clients
25 engaged in trading while in possession of material, non-

1 public information, that -- that sense of shock is
2 completely manufactured.

3 I had -- I had a conversation with Mr. Sher on
4 May 11th, and in fact Mr. Sher makes reference to that
5 conversation in his June 8th letter to the Court, and he
6 quotes something that I said during the course of that
7 conversation, which I suppose he thinks works to his
8 advantage, but what he hasn't told the Court is that part of
9 that conversation concerned a discussion about what are the
10 potential basis for equitable subordination here. Because
11 we've been hearing for a long time from many of these
12 noteholders that, oh, we don't have a basis for equitable
13 subordination and they're going to move for summary
14 judgment. And so when I laid out the potential basis for
15 summary judgment, I absolutely told Mr. Sher, and Greenberg,
16 and all the other lawyers on the phone at the time, that
17 this was a potential theory that we would seek to press at
18 trial. So the idea that this is some eleventh hour, or as
19 Mr. Zirinsky says, you know, after midnight news to them, is
20 -- is -- is just false.

21 And, of course, I'll be as candid with Your Honor
22 as I've been with counsel all along. When I explained to
23 them why we did not come right out in the complaint and say
24 that, it was a nature of explaining that we understand that
25 those kinds of allegations can be very sensational, can

1 attract a lot of public attention, we're not interested in
2 turning this case into a circus, we're interested in
3 litigating the case on the merits, and we also understand,
4 in particular one -- one thinks about what happened at WAMU,
5 that when a plaintiff raises a claim in the nature of a
6 hedge fund trading based on material, non-public
7 information, that the hedge funds have considered that, you
8 know, a claim that they absolutely can't resolve, they have
9 to go to the mat, it's the third rail, and so we were
10 concerned that being too explicit about it would be
11 something that could interfere with the possible ability to
12 resolve the case.

13 So, for all those reasons, I explained to them
14 that we've tried not to be sensational in the way that we
15 made the allegation, but -- but the idea that -- that this
16 is -- that this new is -- is just false.

17 And at every single fact deposition that we took,
18 we asked each and every noteholder witness to look at the
19 June 1 8K and we -- that sought to show -- and of course
20 this is in dispute, and we say the June 1 8K does not
21 disclose lots of important information about the lock-up
22 agreement -- but at every deposition we sought to show that
23 the June 1 8K disclosure was inadequate, and of course, at
24 every deposition we showed the witnesses their 2019s and had
25 them confirm that during the period of time after June 1,

1 they engaged in trading.

2 So I would say there were sort of two dots on the
3 page, and a dotted line between the dots, and, you know,
4 perhaps now we've taken our pencil and -- and filled in the
5 little gaps between -- between those lines, but everyone has
6 known for a long time now that this is among the inequitable
7 conduct that was at issue in the case.

8 But, you know, that's not -- that's not really the
9 -- the focus of this call, the focus of this call is should
10 -- should they -- should Appaloosa and Morgan Stanley,
11 Elliott, and Fortress be permitted to -- be granted leave to
12 move for summary judgment? And we just think that it would
13 be a colossal waste of resources and a colossal diversion of
14 attention at a point in time when everyone should be focused
15 on getting ready for trial, putting on the trial in the most
16 efficient way possible, given that it is a very big,
17 complicated trial, but putting it on in the most efficient
18 way possible.

19 And people refer to the new GM motion, the one
20 that's pending, and the motion as to which our opposition is
21 due tomorrow, as an example of this case being amenable to
22 summary judgment. And it's a very poor example of that.

23 I can tell Your Honor that the new GM motion
24 involves 104 facts in their -- in their statement of facts
25 under Rule 56. Certainly, the facts that are material are

1 disputed, and unfortunately, even many of the facts that are
2 immaterial are disputed. And that particular motion was
3 pitched to Your Honor as a motion that was going to be very
4 limited. It was only supposed to focus on Rule 60(b)
5 release, very narrow.

6 And I think that that's part of why Your Honor
7 felt that it was appropriate to grant new GM leave to make
8 the motion, but as it's turned out, and as you can hear, new
9 GM has worked together with Greenberg and with Paul Hastings
10 to submit a motion that attempts to address this case in a
11 way that's -- that's comprehensive, and it's -- it -- it's
12 doomed to fail, because hearing Mr. Zirinsky recite his
13 version of the case, I understand it to be exactly that.

14 It is his version of the case, and there's simply
15 an inability on the part of the noteholders here to
16 understand that there is another side to the story, that
17 there are many facts in dispute, that those facts are
18 material, and the way to resolve those kinds of disputes is
19 at trial.

20 The only way, I think, that Appaloosa and -- and
21 that the Greenberg noteholders can say there are no disputed
22 material facts here is to simply not even acknowledge the
23 many facts that have come out in discovery that demonstrate
24 that there's another side of this story that absolutely
25 needs to be told. And we've tried to lay out that other

1 side of the story, just in broad strokes for Your Honor, in
2 our -- in our pre-motion letter.

3 I'm happy to address any particular issue on the
4 merits as to which Your Honor may have questions.

5 I also think that Mr. Sher's arguments, and
6 Mr. Zirinsky's arguments that because we amended our
7 complaint at the close of fact discovery to correct certain
8 inaccuracies, that demonstrates that they're entitled to
9 summary judgment, is a good example of no good deed going
10 unpunished.

11 We have been saying for many weeks that during the
12 course of discovery we became aware of certain facts alleged
13 in the complaint that needed to be fixed.

14 We learned, for example, that the noteholders did
15 not initiate the conversations with General Motors. General
16 Motors initiated those conversations. So, we corrected that
17 allegation.

18 It was pointed out to us that we alleged in the
19 complaint that GM Nova Scotia Finance had no assets, when in
20 fact it had an asset which was an intercompany receivable
21 from GM Canada, so we amended the complaint to indicate that
22 its only asset was that receivable from GM Canada.

23 The amendments to the complaint are not material.
24 The -- the focus on this language of -- of -- that the
25 noteholders pounced and now that we can't say that the

1 noteholders pounced somehow our complaint is without merit
2 is silly, because it's very clear that those allegations
3 were in the nature of painting the picture, and it's also
4 been made clear to us that, as I said, that they didn't
5 initiate the -- the negotiation, and so we amended that
6 allegation, but it's -- it's absolutely immaterial to the
7 fundamental theories that the GUC Trust is pursuing here
8 with regard to equitable subordination. We do not think
9 that these are the kinds of issues that are appropriate for
10 summary judgment.

11 And in terms of conducting an efficient trial, our
12 witness list, Mr. Zirinsky says that I have 20 witnesses, we
13 listed 19 witnesses, and in recent conversation with counsel
14 we explained that at the most we expected to call 13 of
15 them. Three of those witnesses are expert witnesses. We're
16 working with the Nova Scotia Finance trustee to see if at
17 least one of those expert witnesses we can -- we can
18 stipulate as to the relevant expert issues, which is
19 basically how to calculate the swap claim, if there is a
20 valid swap claim.

21 So we're doing everything we can to put on an
22 efficient trial. We would like to work with all counsel to
23 do that and not spend the months of July and August
24 responding to hundreds of alleged undisputed facts that are
25 actually hotly disputed.

1 So for that reason, we -- we think the request for
2 leave to move for summary judgment is simply misguided, Your
3 Honor.

4 THE COURT: All right.

5 Is there anybody else who wants to be heard before
6 I give Mr. Sher and Mr. Zirinsky a chance to reply?

7 MR. STEINBERG: Yes, Your Honor. This is Arthur
8 Steinberg.

9 In response to some of the requests for summary
10 judgment, Mr. Fisher had took the opportunity to allude to
11 my pending motion for summary judgment. In his response
12 today, in connection with others requests for summary
13 judgment, he took his opportunity again to preview his
14 argument.

15 I would like not to turn what I'm sure is a
16 already a lengthy pre-trial conference with my rebuttal to a
17 lot of things that he could say, and simply ask Your Honor,
18 to allow me to make all of my arguments on July 19th on --
19 on the return, and my papers will speak, and I will speak at
20 that point in time.

21 THE COURT: I -- I do have a question,
22 Mr. Steinberg. I thought I was authorizing you to file a
23 summary judgment motion on your 60(b) contentions, are you
24 making factual arguments as well? Or making other arguments
25 as well?

1 MR. STEINBERG: You -- you authorized me to file a
2 summary judgment motion on Rule 60(b), you also authorized
3 me to -- in connection with my arguments that he was
4 asserting a voiding power claims that had been solved to new
5 GM and that he shouldn't be entitled to do that.

6 You also allowed me to -- to move for summary
7 judgment on the grounds that GM Canada, as creditors, should
8 have been exposed to this transaction, and therefore that
9 any type of transaction would have insulated GM Canada,
10 which new GM board is part of this deal free and clear of
11 all claims, somehow should be undone.

12 You also allowed me to protect any opportunity
13 that on the 60(b), which dealt with avoiding the assumption
14 and assignment procedures of executory contracts, that's
15 part of 60(b), the other part of 60(b) was that he wanted to
16 avoid the procedures relating to the purchase of the swap
17 claim by new GM from old GM. Those are all things that are
18 part and parcel of what I was granted to file a summary
19 judgment for.

20 The factual disputes that he's talking about, if
21 Your Honor, wants to -- to get into it is that -- that in
22 our papers we said that the lock-up agreement should not be
23 avoided, and we said that the notion of whether this is a
24 pre-petition agreement or a post-petition agreement is a red
25 herring argument, because whether it was a pre-petition

1 agreement or a post-petition agreement new GM acquired it.
2 And -- and we went through the basis upon why if that's the
3 case it doesn't really matter and half of whatever is being
4 argued here is irrelevant, and that's a matter of law.

5 We didn't try to get into the issue of the
6 specificity of whether a document was signed before or
7 after, but we did say that there -- that there are certain
8 facts that -- that there are absolutely not disputed as to
9 what the parties' intentions were, that the parties signed
10 an agreement and agreed for their signature pages to be
11 distributed out, and all of the people testified that that
12 occurred before the bankruptcy filing, and therefore, that
13 lock-up agreement was a binding agreement at that point in
14 time, no matter what occurred. And that was a basis upon
15 which we were trying to protect the -- the lock-up
16 agreement.

17 One of the allegations in the objections is that
18 this is an unauthorized post-petition settlement. That's
19 not a -- we think that that -- and we got permission to file
20 a summary judgment -- that is not a settlement of anything,
21 just a lock-up agreement, didn't settle any rights of old
22 GM, it settled an intercompany dispute between GM Canada and
23 GM Nova Scotia Finance, and it settled a litigation which
24 was the oppression action brought by the noteholders. But
25 GM didn't give up any rights at all and there was nothing

1 that was settled, and what was locked up was the votes of
2 the -- of the Nova Scotia noteholders in GM Nova Scotia, and
3 that there has been a total distortion of what is involved
4 in this case.

5 And, therefore, in the context of our summary
6 judgment motion, we were trying to strip down this case to
7 what it should be, which is an objection to claims
8 procedure, but not something that would invalidate GM
9 Canada's release that it got under the lock-up agreement and
10 that would protect GM Canada as an asset that new GM bought.
11 And that was exactly the speech that I gave.

12 I certainly didn't say that all I was doing was
13 asking for 60(b) relief, I said that -- that -- that
14 Mr. Vanesky's (ph) deposition made clear that they were
15 looking to vitiate the lock-up agreement all together in
16 order to expose GM Canada to -- to the noteholders' claims
17 as a way of relieving their burden, and I wanted to have the
18 opportunity to get rid of that, and there were no factual
19 issues in dispute.

20 And the fact that we may have put in 100
21 statements of fact doesn't mean that they were material
22 facts in dispute. He'll file his papers tomorrow, and we
23 will see in our response that we'll file shortly thereafter,
24 and we'll have an argument.

25 I doubt that there's any real facts in dispute,

1 and a large portion of what you have here, Your Honor, is
2 that everybody other than Mr. Fisher is trying to scream to
3 you that the emperor has no clothes. And please focus in on
4 that, that there are not facts in dispute. You heard even
5 Mr. Fisher today say that he was just cleaning up something.

6 Your Honor may recall that we didn't want the
7 complaint to be filed publicly because we -- we thought
8 there were scandalous and demonstrably untrue allegations in
9 that, and the things that he's saying he's cleaning up now
10 are some of the things that we pointed out before he
11 actually filed the complaint, the most glaring of which was
12 that the GM, the intercompany loan between GM and GM Canada
13 was repaid, that was part of the document discovery that he
14 had before he filed the amended complaint. That was
15 notoriously left out and he based his entire argument as if
16 there was something that was done that damaged GM creditors
17 when it was GM Canada's funds that was used that ultimately
18 went to Nova Scotia to discharge an intercompany loan and
19 then became the basis of the consent fee.

20 And -- and -- and so when I rose to speak to Your
21 Honor, I was just now -- although I didn't stand in my
22 office, I wanted to -- to be able to say to Your Honor, I
23 have a lot to say, but I -- I am sure that -- that the --
24 this was a noteholder conference on the summary judgment,
25 and I just didn't want Mr. Fisher to take a gratuitous,

1 additional swipe without me being able to say something in
2 response, and all I wanted to say in response was please let
3 me do it at the appropriate time, and not turn this hearing
4 into my hearing, because I don't want that to be my hearing.

5 THE COURT: I think next time I have a conference
6 with you, Mr. Steinberg, I'm going to do it on the record.

7 Who else wants to be heard?

8 (Pause)

9 THE COURT: All right.

10 Reply from Mr. Sher and from Mr. Zirinsky?

11 MR. SHER: Yes, Your Honor, thank you.

12 Two -- two points, I think, just will -- will --
13 one is, on the issue of this insider trading argument, I
14 think Mr. Fisher first should not take what I had said as
15 any kind of personal attack, but secondly is confirming what
16 I said. You know, it's one thing to say we're not alleging
17 a 10(b)(5) allegation, but -- and -- and we don't contend
18 that there was a 10(b)(5) violation, but nonetheless, we are
19 saying that the parties engaged in insider trading, are
20 trading on the basis of material, non-public, information,
21 and regardless of whether they violated any laws that we
22 should be able to consider that, is exactly what I was
23 saying.

24 An insider trading white argument, argument that
25 seeks -- that is purely not for our benefit, but for the

1 plaintiff's benefit, divorce itself from all of the
2 protections that defendants have in these kinds of
3 particularly vexatious that -- such as heightened pleading
4 standards, mandatory sanctions review, et cetera. Those are
5 -- I think that was just confirmed here.

6 But, more importantly, a second confirmation was
7 that it's not in the complaint. And I think given the other
8 types of allegations that were put into the complaint that
9 were very, very pointed, and as -- as Mr. Steinberg pointed
10 out, in our view scandalous and untrue, the -- the --
11 whatever the reason was, the fact is they are not there,
12 everyone agrees on it, the GUC Trust agrees it's not in
13 there. The Second Circuit has said amend the complaint, add
14 a new theory, at -- in response to a summary judgment
15 motion, and they're -- they're barred.

16 Thank you, Your Honor.

17 THE COURT: All right. Anybody else?

18 MR. ZIRINSKY: Yeah, Your Honor, Bruce Zirinsky.
19 I'll be very brief.

20 Mr. Fisher said a lot, but he didn't say very much
21 at all. I didn't hear Mr. Fisher allude to a single fact
22 that would be a material fact that would have to be tried in
23 order for Your Honor to rule on these claims.

24 Again, it's all argument. It's all Mr. Fisher's
25 inflammatory and defamatory spin of his version of the

1 facts. The facts are there. There is no dispute as to the
2 facts.

3 Nine witnesses testified as to the lock-up
4 agreement. All said it was a pre-petition agreement,
5 including Weil Gotshal. Nobody has testified to the
6 contrary.

7 Likewise, the arguments about the consent fee, no
8 one has testified that it was an unfair, unreasonable, or
9 inequitable payment. General Motors' witnesses testified
10 that it was an arms-length negotiation, it was contracted
11 for, and it was approved by the U.S. and the Canadian
12 governments.

13 Again, no evidence, not even a factual allegation
14 which would support it unreasonable -- it being an
15 unreasonable payment or unconscionable or give any legally
16 cognizable basis for the Court re-characterizing it for
17 anything other than it was. It's a legal argument.

18 Mr. Fisher is free to argue whatever he wants or
19 chooses to argue, but he has no facts and no evidence, and
20 he has come forward with no evidence to sustain or support
21 those arguments, and so, therefore, there's no reason to go
22 to trial on that claim.

23 On the equitable subordination allegations, again,
24 there are no disputed facts. Mr. Fisher has offered
25 absolutely no evidence to support his allegations of

1 wrongdoing.

2 Secondly, even if you accept those allegations,
3 they're insufficient as a matter of law to support a claim
4 for equitable subordination.

5 Similarly, on the insider trading allegations,
6 Mr. Fisher now says, well, he's not alleging that there was
7 a violation of securities law, he merely wants to show the
8 Court that the noteholders acted inequitably by trading
9 securities after the bankruptcy and after disclosure by GM
10 of the lock-up agreement and other public disclosures of the
11 lock-up agreement, as if to suggest, by innuendo, that the
12 noteholders did something wrong.

13 This is litigation by -- by terrorism. It's
14 litigation by innuendo.

15 If Mr. Fisher believes that there is a claim
16 against the noteholders which is legally cognizable for
17 wrongdoing, he's got to be able to support that under the
18 law. He can't just throw mud at the noteholders, and say to
19 the judge, Judge, look how bad these people are, they traded
20 their securities and that, you know, the 8K didn't have
21 this, this, and that in it. Well, Your Honor, can look at
22 the 8K and determine based upon the papers, themselves, what
23 was material or what was not material.

24 And it is our contention, and everyone else's
25 contention in this case, except Mr. Fisher, that all of the

1 material facts regarding the lock-up agreement were
2 disclosed.

3 Mr. Fisher doesn't -- also doesn't tell the Court
4 that on June 5, five days after the bankruptcy, a full
5 disclosure was given to the creditors' committee and its
6 professionals by GM, which fully described the lock-up
7 agreement and all of the proposed transactions with the
8 noteholders. Mr. Mehr (ph), who was counsel, lead counsel,
9 for the committee testified that he received it. He doesn't
10 remember whether he read it or not, or whether he considered
11 it important or not at the time, but it's in the deposition
12 testimony, that it was right there in black and white, given
13 to the creditors' committee on June 5 in 2009, a full
14 description of all of the proposed transactions in Canada,
15 as well as a description of all of the intercompany
16 liabilities as between GM Canada, GM Nova Scotia, and GM,
17 the debtor, GM U.S. It was all there.

18 Mr. Fisher doesn't tell that to Your Honor because
19 he knows that those facts, when they come out, and they will
20 come out in our papers, and they're undisputed facts,
21 creditors' committee counsel admitted he had those facts in
22 front of him.

23 The time records, if you go and look at Kramer
24 Levin's (ph) time records, there are time entries,
25 concurrent with all of these events and concurrent with all

1 of these public disclosures and all of these disclosures
2 filed with the Bankruptcy Court in connection with the GM
3 sale and the GM DIP financing agreement with the U.S.
4 government. There were time records which show that Kramer
5 Levin reviewed all of these documents.

6 So for Mr. Fisher to tell Your Honor that there
7 was some nefarious conspiracy, or some nefarious facts here,
8 it's just simply untrue and he has no evidence to support
9 it, indeed all of the evidence belies what he's telling you.

10 And that's why we think it would be a crying shame
11 for us to have to go through a protracted trial, and all of
12 the expense, and all of the delay, and all of the harassment
13 of having to put witnesses before Your Honor, and having,
14 you know, 13 witnesses or more and spending months of trial
15 before we can finally get to a conclusion here, when
16 everything is ripe to be decided now.

17 Look, the Supreme Court in Solatex (ph) has said
18 one of the principal purposes of summary judgment rule is to
19 isolate and dispose of factually unsupported claims, and we
20 think it should be interpreted in a way that allows it to
21 accomplish this purpose. That's exactly what we have here.
22 We see no good reason why we shouldn't be permitted to file
23 a motion for summary judgment.

24 Thank you, Your Honor.

25 THE COURT: All right, you guys can stay on the

1 line. I'm going to take a recess and I'll be back to you,
2 I'm not sure how quickly. We're in recess.

3 (Recess at 11:09 a.m.)

4 THE COURT: Ladies and gentlemen, I'm granting
5 leave to Aurelius to file the motion it wants to file, and
6 I'm denying leave to file any of the others.

7 Aurelius' motion will be presumably based on one
8 or two limited grounds and is fundamentally different than
9 the others. But I'm denying the remainder of the requests
10 for a host of reasons.

11 First, but very importantly, we have a trial on
12 August 7. That's only a shade more than 30 days from now.
13 The notion that I could address these issues, and issue one
14 or more than one, seemingly two or three, opinions on this
15 controversy by that time, involving hundreds of millions of
16 dollars and what will involve hundreds of statements of fact
17 and related record references, is frankly ridiculous.

18 I have dozens of real time matters on my
19 short-term plate, of which some very important ones are
20 governed by statutory obligations to decide them in very
21 limited periods of time. That doesn't even include the
22 other billion dollar matters that compete for my time,
23 including one in this very GM case.

24 Now, perhaps recognizing this, it was argued to me
25 that while we have three days of trial starting on August 7,

1 we may very well not be done by then, or we probably won't
2 be done by then, or we certainly won't be done by then, so I
3 should decide these summary judgment motions, anyway. But
4 there are at least three things wrong with that.

5 First, the issues to be addressed at trial, which
6 I'm now told will call for between 13 and 20 witnesses,
7 underscore the complexity of the case and its inability to
8 be addressed on summary judgment.

9 The second is that's terrible case management.
10 Summary judgment in the middle of a trial? That's
11 inconsistent with its premise and undercuts many of its
12 benefits, even if it were otherwise appropriate.

13 Third is that the parties are going to be -- need
14 to be working very hard between now and August 7 on getting
15 ready for trial, and that's where they should be putting
16 their attention, and if they can't put their attention to
17 that it's going to prejudice one side or both.

18 Related to all of those things is the second
19 reason. Federal Rule of Bankruptcy Procedure 7056, as
20 approved by the Rules Committee and the Supreme Court, and
21 as it will go into effect on December 1st of this year, five
22 months from now, prohibits summary judgment motions from
23 being filed within 30 days of trial, unless otherwise
24 ordered by the Court.

25 I'm not going to otherwise ordered. Amended Rule 7056

1 provides that way for a reason, which is the very concerns
2 that we're talking about today.

3 Third, we put in the requirement for a pre-motion
4 conference in our local court rules, and I did likewise in
5 my case management orders, for important reasons.

6 One reason is that parties very often ask for them
7 too soon and then we have to deal with Rule 56(d) defenses
8 to those motions.

9 But the more important reason is that history has
10 taught us over and over again that lawyers contend that they
11 should win without a trial because there are no issues of
12 fact and they think they have the better argument.

13 Lawyers are advocates for their clients, and of
14 course, they say what they say, and I did it when I was a
15 lawyer, which I was for 30 years before I got on the bench,
16 but the fact is I get this stuff all the time. A party says
17 look at the facts, agree with us, and it gives insufficient
18 attention to the fact that its view of the world is not the
19 only one.

20 I've been doing this stuff now for 42 years. One
21 side saying there are no issues of fact doesn't make it so.
22 I would have thought that sooner lawyer -- sooner or later
23 that lawyers and their clients would learn.

24 And if I had known that new GM thought it could
25 use its 60(b) argument as a Trojan horse for all of the

1 things I heard that it wants to raise now I would have
2 denied leave to file that motion as well.

3 Fourth, but most importantly, this transaction may
4 be as outrageous as the GUC Trust contends on the one hand,
5 or it may be totally innocent and benign as all of the
6 claimants contend on the other, but I don't know yet, and
7 the self-serving letters with parties' spin on the facts
8 don't answer that question. That's why we have trials.

9 And here, much more so than most of the matters on
10 my watch, I need to see the witnesses and look them in the
11 eye and hear their explanations for what happened and what
12 they did.

13 If parties contend that alleged insider trading
14 issues are irrelevant to equitable subordination or were not
15 satisfactorily raised in the complaint or prior proceedings
16 they can raise that by a motion in limine. But with or
17 without allegations of insider trading I'm not going to
18 authorize motions for summary judgment now.

19 We're adjourned.

20 (Whereupon these proceedings were concluded at 11:43
21 AM)

22
23
24
25

I N D E X

RULINGS

	Page	Line
Motion for Objection to Claim(s) Number:	8	18
66211 and 67347 (filed by D&M Real Estate LLC and Horse Tavern & Grill)		
280th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Fonner Salaried and Executive Employees)	9	8
Motion to Approve the Lower Ley Creek and Onondaga Non-Owned Site Settlement Agreements and Enter the Stipulation and Agreed Order Between the GUC Trust and the United States	18	24
Motion for Leave to File Summary Judgment by Aurelius Investment LLC	61	4
Motion for Leave to File Summary Judgment by the Appaloosa Investment Limited	61	17
Motion for Leave to File Summary Judgment By Fortress, Elliot, & Morgan Stanley	61	17

C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Jamie
Gallagher

Digitally signed by Jamie Gallagher
DN: cn=Jamie Gallagher, o=Veritext,
ou, email=digital@veritext.com, c=US
Date: 2012.07.02 11:57:39 -04'00'

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: July 2, 2012